

Friends of the Clearwater

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Cheryl Probert
Forest Supervisor
Nez Perce and Clearwater National Forests
903 3rd Street
Kamiah, ID 83536

SENT VIA EMAIL comments-northern-nezperce@fs.fed.us

Dear Supervisor Probert:

These comments are on behalf of Friends of the Clearwater on the January 24 scoping letter for several projects. We notice the comment period was extraordinarily short. This is yet another attempt by the agency to shortchange public involvement in our national forests.

Klondike Groups Exploration

The route to the exploration site may not be on the Forest Service road system. The September 22, 2015 travel analysis report map is too small of a scale to be certain thought it does appear this route is not on the system. Thus, the improvement of 700 feet is likely creation of a new road. However, the scoping letter only talks about reclamation of the site itself rather than the road.

Furthermore, there are two springs the road must avoid. Is the exploration work or road within an RHCA?

The claimant is supposed to stop work of cultural resources are uncovered, yet there is no indication that the claimant has any knowledge of archaeology at all. How is this stipulation meaningful? Further, has clearance work been done in this area?

Given these issues, a CE is not sufficient. An environmental assessment is more appropriate.

It should be emphasized the agency's duties under the ESA are not overridden by any "rights" the applicants may have under the 1872 mining law. The courts are clear in ruling that prohibitions under the ESA must be enforced, even to deny mining operation and: "of course, the Forest Service would have the authority to deny any unreasonable plan of operations or plan otherwise prohibited by law. E.g., 16 U.S.C. 1538 (endangered species located at the mine site). The Forest Service would return the plan to the claimant with reasons for disapproval and request submission of a new plan to meet the environmental concerns." (*Havasupai Tribe v. U.S.*, 752 F.Supp. 1471, 1492 (D. Az. 1990) affirmed 943 F.2d 32 (9th Cir. 1991) cert. denied 503 U.S. 959 (1992); See also *Pacific Rivers Council v. Thomas*, 873 F.Supp. 365 (D. Idaho 1995); *Pacific Rivers Council v Thomas*, 30 F.3d 1050 (9th Cir 1994) cert. denied 115 S.Ct. 1793 (1995)).

The issue of claim validity is important. This is important because the reasonableness of the proposed action needs to be adequately considered for such a proposal.

Activity or facilities that are “reasonably incident” will vary depending on the stage of mining activity. Through case law that has evolved since 1955, the reasonably incident standard has been interpreted to include only activity or facilities that are an integral, necessary, and logical part of an operation whose scope justifies the activity or facilities. Activities that are “reasonably incident” would be expected to be closely tied to, and be defined within, what would be reasonable and customary for a given stage of mining activity. Such levels of activity would include initial prospecting, advanced exploration, predevelopment, and actual mining. Each stage is defined by an increasing level of data and detail on the mineral deposit that, in total, contribute to an increasing probability that the deposit can be mined profitably. Each stage also has an increasing impact on the land.

The logic of sequencing is also obvious to the Forest Service whose charge is the management of surface resources: Keep it small, to the extent practicable, and build, if warranted, from there. In other words, minimize the amount of disturbance to surface resources in order to prevent unnecessary destruction of the area, and to ensure to the extent feasible that disturbance is commensurate with each level of development. How do nine sample locations and trenches fit in with these requirements?

That simple principle is of paramount interest to the Forest Service that, by its Organic Act, is responsible on lands in the National Forest System “to regulate their occupancy and use to preserve the forest thereon from destruction.” Equally important, the principle has been articulated by the 9th Circuit Court in *United States v. Richardson*, 599 F.2d 290 (9th Cir. 1979), *cert. denied*. The Court clearly articulated that mining is a sequential process composed on logical steps. Further, mining activity that would cause significant surface disturbance on lands in the National Forest System must be related to a logical step in that process and the steps must be in the proper sequence. And, significant disturbance requires more than a simple CE.

The scoping letter lacks enough information to make that determination. The question must be asked, “Has the claimant made the discovery of a “valuable mineral deposit” on this claim?” (30 U.S.C. 22). A mining claim location does not give presumption of a discovery. (*Ranchers Exploration v. Anaconda*). “[L]ocation is the act or series of acts whereby the boundaries of the claim are marked, etc., but it confers no right in the absence of discovery, both being essential to a valid claim.” (*Cole v. Ralph*, 252 U.S. 286, 294-96 (1920)).

In essence, the Forest Service is proposing to approve the project prior to any analysis and leaving specific details to a later date. The automatic assumption this is something that can be approved with a CE fails to take a hard look at the crucial issue of whether this complies with the ESA, whether it complies with clean water law and policy for ground and surface water and the amount of time this project would take.

Please send us a copy of the plan of operations and any other documents submitted by the applicant for this proposal.

Major Fenn

While this project is designed to be restoration, and reconnecting the channel would be a good idea, we do have concerns over the use of heavy equipment within a Wild and Scenic River and the requirement of obtaining a 404 permit. We are not aware of work of this type on such a large river on the Nez Perce and Clearwater National Forests. Monitoring should be done to document whether and how the mitigation measures worked on a river of this size and on the outstandingly remarkable values. A publicly released project report would be helpful for any possible future considerations of this type.

Lastly, the reference to a claimant seems to be in error (page 8). Why is this included for this project?

North Fork Woody Debris

This project seems to fit under a CE, though the CE category in the scoping letter is not the appropriate one. The removal and relocation of debris has already occurred. This is more like the riparian restoration in the Major Fenn proposal above. It would be useful for projects of this type (those requiring a 404 permit) for the agency to release a report on what has happened on past projects of this type and any monitoring results.

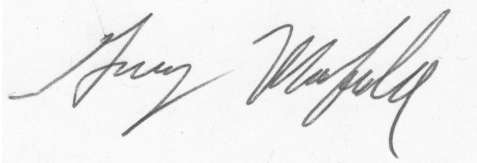
Who is “the claimant” for this project? The reference to a claimant on page 11 seems to be in error.

Regardless, the lack of downed woody debris is an issue with agency management. First, there are too many roads on the Clearwater National Forest and North Fork District. Also, the lack of downed woody material can’t be blamed entirely on the poor location of the roads. Logging has contributed to this lack. Indeed, Beaver Creek had adequate downed material due to the debris flow in it even though the road parallels the stream.

Summary

Again, keep us updated on all of these projects.

Sincerely,

A handwritten signature in dark ink, appearing to read "Gary Macfarlane", written in a cursive style.

Gary Macfarlane